

CCRB INVESTIGATIVE RECOMMENDATION

| | | | | | |
|--|-------------------------------------|---------------------------|--|------------------------------------|---------------------------------|
| Investigator: Julian Phillips | Team: Squad #5 | CCRB Case #: 201808579 | <input type="checkbox"/> Force | <input type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input type="checkbox"/> O.L. | <input type="checkbox"/> Injury |
| Incident Date(s) Thursday, 10/04/2018 2:53 PM | Location of Incident: § 87(2)(b) | Precinct: 49 | 18 Mo. SOL 4/4/2020 | EO SOL 11/19/2020 | |
| Date/Time CV Reported Sun, 10/07/2018 9:28 PM | CV Reported At: IAB | How CV Reported: Phone | Date/Time Received at CCRB Tue, 10/16/2018 11:12 AM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
| | | |
| | | |
| | | |

| Witness(es) | Home Address |
|-------------|--------------|
| | |
| | |
| | |

| Subject Officer(s) | Shield | TaxID | Command |
|----------------------|--------|--------|---------|
| 1. POM Miguel Torres | 05529 | 961386 | 049 PCT |

| Witness Officer(s) | Shield No | Tax No | Cmd Name |
|-----------------------|-----------|--------|----------|
| 1. POM Jason Mattos | 06124 | 944236 | 049 PCT |
| 2. POM Philip Bouchet | 07659 | 963407 | 049 PCT |
| 3. POM Eric Acosta | 12406 | 963355 | 049 PCT |

| Officer(s) | Allegation | Investigator Recommendation |
|---------------------|--|-----------------------------|
| A.POM Miguel Torres | Abuse: Police Officer Miguel Torres entered § 87(2)(b) in the Bronx. | |

Case Summary

On October 7, 2018, § 87(2)(b) filed this complaint with the IAB by telephone, generating original log number 2018-39328. § 87(2)(b) did not witness the incident. On October 16, 2018, IAB forwarded this complaint to the CCRB.

On October 4, 2018, at approximately 2:53 p.m., Police Officers Eric Acosta, Philip Bouchet, Jason Mattos, and Miguel Torres, all of the 49th Precinct, responded to § 87(2)(b) in the Bronx. The officers were responding to a 911 call placed by § 87(2)(b) a resident of § 87(2)(b) § 87(2)(b) who reported that § 87(2)(b) a resident of § 87(2)(b) § 87(2)(b) was inside his apartment. Four hours previously, § 87(2)(b) had reported to police that § 87(2)(b) had thrown a cleaning brush at her, causing a minor abrasion. PO Torres entered § 87(2)(b) § 87(2)(b) (**Allegation A: Abuse of Authority**, § 87(2)(g)). § 87(2)(b) fled the scene and was not apprehended. Several weeks later, § 87(2)(b) was arrested based on § 87(2)(b)'s report of his having thrown the cleaning brush; however, this arrest was immediately voided upon review by the assigned detective.

On November 1, 2018, the NYPD confirmed that there was body worn camera footage of this incident that required redactions. On November 14, 2018, the NYPD notified the CCRB that this footage would not be released absent an unsealing order because the footage had been deemed related to the arrest of § 87(2)(b) effected on October 18, 2019, which was subsequently sealed. On April 1, 2019, the NYPD notified the CCRB that the footage would be released without an unsealing order. On June 4, 2019, the NYPD notified the CCRB that the footage would not be released absent an unsealing order. The NYPD's inconsistent communications regarding the footage delayed the investigation by approximately ten weeks.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Miguel Torres entered § 87(2)(b) § 87(2)(b) in the Bronx.

It is undisputed that PO Torres entered the apartment through a rear door after Naiser § 87(2)(b) a six-year-old boy, opened the door for him.

§ 87(2)(b) (§ 87(2)(b)'s daughter, and § 87(2)(b)'s sister) testified (**01 Board Review**) that PO Bouchet and PO Mattos knocked on the front door of the apartment. § 87(2)(b) and her § 87(2)(b)-old son, § 87(2)(b) spoke to the officers through the closed door. PO Bouchet and PO Mattos asked if § 87(2)(b) was home, and § 87(2)(b) replied that he was. § 87(2)(b) turned around and observed that PO Acosta and PO Torres had entered the apartment through a rear door. § 87(2)(b) then opened the front door of the apartment, allowing PO Bouchet and PO Mattos to enter. An officer subsequently informed § 87(2)(b) that § 87(2)(b) had opened the rear door for PO Acosta and PO Torres, although § 87(2)(b) did not witness this herself.

§ 87(2)(b) who declined to provide a sworn statement to the CCRB, provided a telephone statement about the incident (**02 Board Review**). § 87(2)(b) reported that, as § 87(2)(b) was speaking to officers through the

closed front door of the apartment, PO Torres entered the apartment through the rear door. § 87(2)(b) fled through the open front door and evaded the officers on scene.

§ 87(2)(b) testified (**03 Board Review**) that, earlier that day, she had informed officers of an incident in which she had confronted § 87(2)(b) in their shared backyard and § 87(2)(b) had thrown a brush used for cleaning a grill, striking § 87(2)(b) and causing a minor abrasion. After summoning officers to the scene at 2:53 p.m., § 87(2)(b) accompanied PO Bouchet and PO Mattos to the front door of § 87(2)(b). The officers spoke to § 87(2)(b) through the closed door, and determined that § 87(2)(b) was inside the apartment. § 87(2)(b) observed § 87(2)(b) open the front door, but did not see any officers enter the apartment.

PO Torres testified (**04 Board Review**) that, upon his arrival, PO Bouchet and PO Mattos informed him that, earlier that day, § 87(2)(b) had reportedly committed felony assault, but had fled the scene upon officers' initial response. PO Bouchet and PO Mattos further advised PO Torres to go to the backyard of the building in case § 87(2)(b) again attempted to flee. PO Acosta and PO Torres entered the backyard and remained there for several minutes. PO Torres knocked on the rear entrance door of § 87(2)(b) and § 87(2)(b) opened the door. PO Torres assessed that § 87(2)(b) was approximately five years old. PO Torres observed § 87(2)(b) inside the apartment. PO Torres entered the apartment because he possessed probable cause to arrest § 87(2)(b) and intended to place him under arrest for assaulting § 87(2)(b). PO Torres confirmed that he had no other reason for entering the apartment.

PO Acosta's testimony (**05 Board Review**) was consistent with the testimony of PO Bouchet. PO Acosta confirmed that PO Torres was the first to enter the residence, that he did not see how the rear door was opened, and that he entered the residence merely to follow PO Torres.

§ 87(2)(g)
§ 87(2)(b) PO Bouchet and PO Mattos testified that, while they were speaking to § 87(2)(b) through the closed front door of § 87(2)(b), § 87(2)(b) confirmed that § 87(2)(b) was inside the apartment. The front door abruptly opened, PO Bouchet and PO Mattos observed that PO Torres and PO Acosta were already inside the apartment, and entered the apartment.

PO Bouchet prepared a Complaint Report documenting § 87(2)(b)'s alleged assault of § 87(2)(b) (**08 Board Review**). The Complaint Report resulted in the generation of an I-Card for § 87(2)(b) seven days after the incident (**09 Board Review**).

§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)

Courts have held since Payton v. New York, 445 U.S. 573 (1980) (**10 Board Review**) that, with narrow exceptions, officers may not enter an individual's residence to effect an arrest absent a warrant.

§ 87(2)(g)

Civilian and Officer CCRB Histories

- PO Torres has been a member of the NYPD for three years and this is the first CCRB complaint to which he has been a subject.
- This is the first CCRB complaint to which § 87(2)(b) has been a party (**11 Board Review**).
- This is the first CCRB complaint to which § 87(2)(b) has been a party (**12 Board Review**).
- This is the first CCRB complaint to which § 87(2)(b) has been a party (**13 Board Review**). § 87(2)(b)

Mediation, Civil, and Criminal Histories

- § 87(2)(b) and § 87(2)(b) both declined to mediate this complaint.
- § 87(2)(b) filed a Notice of Claim with the City of New York claiming assault, unlawful entry, physical, emotional, mental, and psychological injury, pain and suffering, medical costs and expenses, embarrassment and humiliation, and seeking \$3,000,000 as redress (**16 Board Review**).

• [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: _____

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date

